

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs March 25, 2008

**STATE OF TENNESSEE v. MICHAEL RAINES**

**Direct Appeal from the Criminal Court for Polk County  
No. P01-009     Carroll L. Ross, Judge**

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**No. E2007-00840-CCA-R3-CD - Filed May 21, 2008**

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After a second trial, the defendant, Michael Raines was convicted by jury of second degree murder and received a twenty-three-year sentence. On appeal, the defendant argues that the evidence was insufficient to sustain his conviction for second degree murder. Following our review of the record, parties' briefs, and applicable law, we affirm the defendant's conviction.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

J.C. McLIN, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

Richard Hughes (on appeal) and Wayne Carter (at trial), Cleveland, Tennessee, for the appellant, Michael Raines.

Robert E. Cooper, Jr., Attorney General and Reporter; Rachel W. Harmon, Assistant Attorney General; Robert Steve Bebb, District Attorney General; and Matthew Dunn and Andrew Frieberg, Assistant District Attorneys General, for the appellee, State of Tennessee.

**OPINION**

**FACTS AND PROCEDURAL HISTORY**

The appellate record in this case reflects that the defendant was originally indicted for first degree murder. After his first jury trial, the defendant was convicted of the lesser-included offense of second degree murder and was sentenced to twenty-two years in confinement. The defendant appealed and this court affirmed the defendant's conviction and sentence on appeal. *See State v. Michael Raines*, No. E2001-00996-CCA-R3-CD, 2002 WL 598544 (Tenn. Crim. App., at Knoxville, April 17, 2002), *perm. app. denied* (Tenn. Sept. 30, 2002). The defendant subsequently filed a petition for post-conviction relief. For reasons not entirely explained in the record, the defendant was granted post-conviction relief in the form of a new trial. After the second trial, a jury convicted the defendant of second degree murder. Thereafter, the defendant was sentenced to twenty-three years in confinement. The defendant now appeals.

The facts giving rise to this appeal are as follows. James Burris, a police officer with the Polk County Sheriff's Department, testified that on October 9, 1999, he responded to a call that shots had been fired at a residence on Old Federal Road where the defendant and his father, Don Raines, lived. When he arrived at the residence, he discovered Glen Young, the victim, lying face-down in the driveway. The victim had no pulse and there was blood running out from under the victim's body. Officer Burris recalled that Don Raines was standing on the front porch of his residence when he arrived. Mr. Raines was visibly upset. Officer Burris was given a description of the defendant's vehicle, a white Geo. Subsequently, the defendant was apprehended at the Golden Gallon and taken into custody by police officers from Bradley County. Once in custody, the defendant waived his *Miranda* rights and gave a statement concerning the events surrounding the shooting of the victim. According to Officer Burris, the defendant showed no emotion when he was apprehended.

David Guy, an agent with the Tennessee Bureau of Investigation (TBI), testified that he investigated the crime scene hours after the victim was shot. Thereafter, he questioned Alan Bates and the defendant about the victim's death. The defendant had already been taken into custody and advised of his *Miranda* rights before he gave a statement. According to Agent Guy, the defendant's demeanor was calm when he gave his statement. When asked if he knew why he was in custody, the defendant replied, "Yeah, I shot that guy." Agent Guy stated that the defendant's statement was reduced to writing and signed by the defendant.

The state introduced the defendant's statement into evidence and Agent Guy read it to the jury. The defendant's statement reflects that on October 9, 1999, he and his friend, Alan Bates, went to the home of Lester Pike, a mutual friend. The victim was also at Pike's home. After listening to music and drinking beer for a couple of hours, the defendant and Bates decided to leave, and the victim asked to ride with them. After driving around, the defendant drove to County Line Bar, where the three men drank beer for about two hours. Around 9 p.m., the defendant, Bates, and the victim left the bar in the defendant's car. As they were leaving, the victim asked to borrow the defendant's cigarette lighter. The defendant allowed the victim to use his lighter but later asked for its return. However, the victim refused to return the lighter saying, "No, it's mine now. It's in my pocket." The defendant did not respond but drove to his house to borrow five dollars for gas from his father.

During the ride, the victim bragged to the defendant and Bates that he had been picked up on a murder charge. As the defendant neared his house, the victim said that he was going to take some more stuff. When the defendant arrived at his house, he and the victim exchanged some words. He told the victim and Bates to get out of his car. The defendant went into his house and got the five dollars. He also picked up his pistol on the way out. According to the defendant, he was not planning on shooting the victim, but "got my pistol just in case [the victim] pulled a knife on me." The defendant went back outside and he and the victim argued some more, then "he came at me and I shot him." The defendant went back into the house and told his father to call 9-1-1. Next, he got into his car with Bates and drove to the home of a friend where he hid the pistol under the floor. The defendant then drove back toward his house. On the way, he stopped at the Golden Gallon and was apprehended by police while in the parking lot.

Agent Guy testified that when he inspected the victim's body, he observed that the victim had a single gunshot wound to his upper chest. He recounted that he and other investigative officers

located and gathered evidence at the crime scene. According to Agent Guy, there were several items found on the victim's person, including a wallet, cigarettes, lighters, and some money. One of the lighters found on the victim was the defendant's lighter, which was a Zippo-type lighter with the word, "Raid" engraved on it, promoting the Raid brand bug spray. The pistol the defendant used to shoot the victim was recovered underneath the floor of the defendant's friend's house. The pistol was an RG .22 single-action revolver.

Teri Arney, a forensic scientist with the TBI, testified that she tested the defendant's pistol. From her testing and investigation, Agent Arney determined that the murder weapon was a .22 caliber pistol and that the shot was fired from a distance of greater than two feet, but less than six feet, from the victim. Throughout the trial, several photographs depicting the crime scene, the victim's body, and the evidence collected at the crime scene were introduced into evidence. In addition, the parties stipulated to the autopsy report. The report revealed that the victim died from a single gunshot wound to the chest, which severed his aorta.

Alan Bates testified that he had known the defendant for about five or six years and believed him to be a close friend. According to Bates, he first met the victim at Lester Pikes' home on October 9, 1999. After a couple of hours at Pike's home, the defendant and Bates decided to leave because the defendant had gotten into an argument with the "lady of the house" about a girl. The "lady of the house" told the defendant to stay away from this girl. Bates recalled that he told the defendant during this argument to "chill out" and the defendant told him to "shut up." After the argument, he and the defendant proceeded to leave and the victim asked to ride with them. They went to County Line Bar where they had a few drinks. They left the bar and drove around to a couple of places but eventually headed toward the defendant's house. Bates noted that all three of them had been drinking that night, though he did not know how much alcohol the victim and the defendant had consumed.

Bates testified that at some point during the car ride, he fell asleep. He also noted that at some point during the ride, the defendant gave his cigarette lighter to the victim to use. When he, the defendant, and the victim arrived at the defendant's house, the defendant's father was watching television on the front porch. Bates went over to talk to the defendant's father while the defendant went inside the house. According to Bates, the victim appeared to be asleep in the back seat of the defendant's car. When the defendant came back outside the house he was holding a gun near his leg and his father saw it. The defendant's father asked the defendant what he was doing with the gun, and the defendant replied that the victim stole his lighter and he was going to "take care of it." The defendant's father told the defendant that he would buy the defendant another lighter. The defendant replied, "He's stealing from me and I ain't having it." Bates recalled that he was shocked when he saw the defendant with the gun and did not know what to do.

Bates testified that when the defendant approached the driver's side of the car the victim got out of the back seat on the passenger side. At this time, the victim saw that the defendant had a gun and said, "You point that gun at me, boy, I'll kill you." The defendant then extended his arm and shot the victim. According to Bates, the defendant's father exclaimed, "Oh Lord, Michael, what have you done?" The defendant replied, "Well, daddy, he was stealing from me." After the

defendant shot the victim, Bates took off running down the road. The defendant caught up with him in his car and told Bates to “get [his] ass back over here.” Bates knew the defendant had a gun so he complied and got into the car with the defendant, who then drove away at a high rate of speed. Bates testified that the defendant never asked him to help get the lighter back from the victim. Bates said that he never heard the defendant ask his father for help getting the lighter back either. Bates recalled that the defendant and the victim were similar in height and weight. Bates said he did not think the victim was armed with anything. Bates stated that he saw the defendant aim the gun and shoot the victim who was standing on the other side of the hood of the defendant’s car. On cross-examination, Bates acknowledged that during the car ride the victim had bragged about being in jail, and being under investigation for a murder. Bates also acknowledged that it was evening when the three men arrived at the defendant’s house and visibility was not great.

Don Raines, the defendant’s father, testified that he was watching a football game when the defendant drove up to the house accompanied by Bates and the victim. The defendant entered the house and remarked that he was looking for some gas money. Bates also entered the house and advised Mr. Raines that he and the defendant were afraid of the victim because the victim had been bragging about being in prison for murder. Shortly thereafter, the defendant returned with his gun and told Mr. Raines that the victim had his cigarette lighter and he was going to use the gun to scare the victim into giving the lighter back. Although Mr. Raines told the defendant to forget about it and told him that he would get him another lighter, the defendant walked past Mr. Raines and went outside. Mr. Raines heard the victim holler, “You point that damn gun at me and I’ll kill you,” and then heard a gunshot. Mr. Raines recalled that the defendant approached him and said, “I’ve shot a man, daddy. Call 9-1-1.” Mr. Raines called 9-1-1 and then walked over to the victim to check for a pulse. Meanwhile, the defendant left in his car. Mr. Raines estimated that the whole thing lasted less than a “minute and-a-half.” However, on cross-examination, Mr. Raines conceded that he may have underestimated the time by a couple of minutes.

The defendant testified on his own behalf. His testimony was consistent with the statement he made to police. The defendant added that he was nineteen years old on October 9, 1999, and the victim was much older. The defendant recalled that while at the County Line Bar, he wanted to leave the victim because he “got a bad feeling about him and [he] didn’t want to be around him.” However, Bates did not want to leave the victim so the victim was not abandoned at the bar. After leaving the bar, the defendant drove around with the victim and Bates. During the drive, the victim started to brag about his tattoo, which he claimed he got in prison while doing time for murder. At that point, the defendant became very uncomfortable. The defendant stopped at a friend’s house hoping to stay over and let Bates drive the victim home. However, his friend was not at home, so they continued on. After leaving his friend’s house, the defendant realized that his car was low on gas so he stopped by his house to get some gas money in order to take the victim and Bates home. The defendant said he wanted to take the victim home first because he did not want to be left alone with him.

The defendant testified that while en route to his house, Bates fell asleep. Around this time, the victim bragged again about “killing somebody.” Also at this time, the victim borrowed the defendant’s lighter and refused to give it back. The defendant testified that when the victim refused to return the lighter, the defendant did not say anything so the situation would “blow over.” Upon

arrival at his house, the defendant went to his bedroom to get some spare change on his dresser. He saw his .22 caliber pistol on the dresser and decided to take it so he could scare the victim into giving the lighter back. As he walked past his father on the way out, he told him, “There’s a guy out there been [bullying] me around all night.” His father told him not to worry about it. The defendant recalled that as he approached his car, the victim got out and said, “If you point that gun at me, I’ll kill you.” According to the defendant, the victim then sprinted toward him, and the defendant shot him. After shooting the victim, the defendant told his father to call 9-1-1 because he had just shot someone. The defendant then panicked and drove away in his car. The defendant said he did not intend to shoot the victim, “it was just a reflex.” On cross-examination, the defendant said that he asked the victim to return the lighter a couple of times. The defendant admitted that he never saw the victim with a weapon. However, the defendant asserted that he took his pistol as an “equalizer” because the victim was bigger than him.

Based on the evidence, the jury convicted the defendant of second degree murder.

### ANALYSIS

As his sole issue on appeal, the defendant argues that there is insufficient evidence to sustain his conviction for second degree murder. Specifically, he argues that the evidence merely supports the lesser-included offense of voluntary manslaughter. The defendant based his argument on the premise that the proof shows he was adequately provoked by the victim.

Our review begins with the well-established rule that once a jury finds a defendant guilty, his or her presumption of innocence is removed and replaced with a presumption of guilt. *State v. Evans*, 838 S.W.2d 185, 191 (Tenn. 1992). Therefore, on appeal, the convicted defendant has the burden of demonstrating to this court why the evidence will not support the jury’s verdict. *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000); *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). To meet this burden, the defendant must establish that no “rational trier of fact” could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *State v. Evans*, 108 S.W.3d 231, 236 (Tenn. 2003); see Tenn. R. App. P. 13(e). In contrast, the jury’s verdict approved by the trial judge accredits the state’s witnesses and resolves all conflicts in favor of the state. *State v. Harris*, 839 S.W.2d 54, 75 (Tenn. 1992). The state is entitled to the strongest legitimate view of the evidence and all reasonable inferences which may be drawn from that evidence. *Carruthers*, 35 S.W.3d at 558. Questions concerning the credibility of the witnesses, conflicts in trial testimony, the weight and value to be given the evidence, and all factual issues raised by the evidence are resolved by the trier of fact and not this court. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). We do not attempt to re-weigh or re-evaluate the evidence. *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006). Likewise, we do not replace the jury’s inferences drawn from the circumstantial evidence with our own inferences. *State v. Reid*, 91 S.W.3d 247, 277 (Tenn. 2002).

A conviction for second degree murder requires proof that the defendant unlawfully and knowingly killed another. See Tenn. Code Ann. § 39-13-210(a)(1). A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result. See *id.* § 39-11-302(b). Of significance, voluntary manslaughter requires

proof that the defendant intentionally or knowingly killed another in a state of passion produced by adequate provocation sufficient to lead a reasonable person to act in an irrational manner. *See id.* § 39-13-211.

After reviewing the evidence in the light most favorable to the state, we conclude that the evidence was sufficient to support the defendant's conviction for second degree murder. The evidence established that the defendant had some conflict with the victim over the victim's refusal to return the defendant's cigarette lighter. The defendant drove to his home and went inside and got his gun. While inside, the defendant's father tried to dissuade the defendant from going outside with the gun and even offered to buy him a new cigarette lighter. Notwithstanding his father's advice, the defendant went outside with the loaded gun to confront the victim and retrieve his lighter. When the victim saw the defendant with the gun, he threatened to kill the defendant if the defendant pointed the gun at him. In response, the defendant raised the gun and fired a single shot into the victim's chest. The victim was unarmed at all times. This evidence established that the defendant knowingly killed the victim. Therefore, based on the evidence, a rational jury could have found the defendant guilty of second degree murder.

In the instant appeal, the defendant contends that the evidence clearly shows that the victim provoked the defendant to fear and anger by taking his cigarette lighter and bragging about being in prison for murder. Such provocation led the defendant to retrieve his gun in order to scare the victim into returning the lighter and to protect himself if attacked by the victim. When the defendant walked outside with the gun at his side, the victim moved toward the defendant and threatened to kill him if he pointed the gun at the victim. The defendant speculates that the victim could have ended the hostility by apologizing and returning the lighter. The defendant also argues that it was reasonable for him to believe that the victim was dangerous and capable of carrying out his threat to kill. As such, the defendant argues that the evidence clearly shows he committed voluntary manslaughter rather than second degree murder.

Upon review, we note that the jury was instructed on voluntary manslaughter as a lesser-included offense of second degree murder, as well as, reckless homicide and criminally negligent homicide. The jury was also instructed on self-defense. Whether adequate provocation exists, so as to support a conviction for voluntary manslaughter, is a question for the jury. *See State v. Johnson*, 909 S.W.2d 461, 464 (Tenn. Crim. App. 1995). In finding the defendant guilty of second degree murder, the jury obviously rejected the theory that the defendant was adequately provoked to act in an irrational manner by shooting and killing the victim. As previously noted, the jury, as the trier of fact, determines the weight and value of the evidence and resolves all conflicts in the evidence. *See Bland*, 958 S.W.2d at 659. The jury, as was their prerogative, chose not to credit the defendant's theory that he shot the victim while in a state of passion because he was adequately provoked, and we will not second-guess the factual determinations of the jury. Accordingly, the defendant is not entitled to relief on this issue.

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J.C. McLIN, JUDGE